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OGC Has Reviewed

MEMORANDUM FOR THE RECORD

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SUBJECT:

Ideas for Possible Use in Connection with
Argument on Appeal from Contempt Judgement

1. The so-called "privilege" is not, as the term might be said to connote, some special favor, indulgence or concession on the part of the law or the courts. It is not a "privilege" in the sense of a gratuity which is tenuously held and which may, on slight pretext or technicality, be snatched away.

2. In fact the so-called "privilege" in this case is the exclusive, transcendent right and concern of the United States, which no person or agency--not even the Attorney General, or the National Security Council, or the President--should be able to waive or surrender. Whether secrets directly involving the National Security are to be divulged in open court should never be held to depend upon a technicality or a miscue by individual government representatives.

3. The courts, while jealously guarding their dignity, are bound to recognize and give their protection to secrets involving the National Security. Upon such security depend all the nation's institutions including the judicial system.

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